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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

LISA L.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F079456

(Super. Ct. No. 18CEJ300061)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Brian M. Arax, Judge.

Catarina M. Benitez for Petitioner.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County Counsel, for Real Party in Interest.

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* Before Detjen, Acting P. J., Smith, J. and Meehan, J.

Lisa L. (mother) seeks an extraordinary writ from the juvenile court's orders issued on June 11, 2019, at a contested 12-month review hearing (Welf. & Inst Code,¹ § 366.21, subd. (f)) terminating her reunification services and setting a section 366.26 hearing as to her now four-year-old son, Travis L. She contends the court erred in not returning Travis to her custody. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In March 2018, Fresno police detectives contacted the Fresno County Department of Social Services (department) after arresting mother and her live-in boyfriend, Richard C. (Ricky), for selling drugs out of their home. The detectives found methamphetamine, marijuana and needles accessible to mother's children, then four-year-old, T.L. (a daughter), and three-year-old Travis, who were at daycare at the time of the arrest.

A social worker located the children and took them into protective custody. They were healthy, appropriately dressed and showed no signs of physical abuse. They denied being afraid of anyone or knowing what drugs and alcohol were. They had never seen mother and Ricky engage in domestic violence. They were placed in foster care.

The juvenile court found prima facie evidence warranting the children's detention based on the circumstances of mother's arrest. (§ 300, subd. (b)(1).) The court found Michael D. and Derek S. were T.L.'s presumed and Travis's biological fathers, respectively. The court ordered the department to offer mother and the two fathers services pending its disposition of the case. The department subsequently learned that mother was married to Brock L. at the time of Travis's birth, making him Travis's presumed father. In April 2018, the department placed Travis with his maternal grandfather, Gerald, and his wife.

¹ All statutory references are to the Welfare & Institutions Code.

The department discovered in assessing mother for reunification services that her chronic use of methamphetamine and resistance to treatment technically exempted her. (§ 361.5, subd. (b)(13).) She began using methamphetamine in 2003 at the age of 17 and continued until 2009. During that time, she gave birth to her first two children, who were freed for adoption in August 2010. In 2009, mother was ordered into drug treatment as a condition of parole. She entered a 60-day inpatient program in May 2009, followed by 90 days of aftercare and remained sober for five months. In 2011, she was convicted of driving under the influence and was sentenced to a year of incarceration. She gave birth to T.L. in July 2013 and Travis in September 2014. In May 2015, mother relapsed using methamphetamine. In February 2016, she gave birth to a son, Michael, who was placed with his father. She started using methamphetamine every other day in October 2017. She last used methamphetamine on the day of her arrest and admitted smoking “pot.” Asked whether she planned to maintain a relationship with Ricky, she said she was undecided.

Despite the exemption, there were several factors the department believed weighed in favor of providing mother services. She voluntarily entered substance abuse treatment in April 2018 and was testing negative for drugs. She had taken good care of the children since birth and consistently visited them. The department considered her prospects of successfully reunifying to be good and the children’s best interests served by continuing the relationship.

At the dispositional hearing on June 20, 2018, the juvenile court declared the children juvenile dependents, formally removed them from mother’s custody, ordered mother to participate in family reunification services and ordered Michael to participate in family maintenance services. The court set the six-month review hearing for October 24, 2018. In September, T.L. was reunified with Michael.

By October 2018, mother had completed a parenting class and was participating in her court-ordered services. She had also progressed to liberal visits with Travis. However, she was allowing Ricky unauthorized contact with Travis despite the department's repeated warnings against it and her written promise not to allow it. The department discovered the unauthorized contact when Travis disclosed that "Ricky" gave him a haircut during a visit with his mother. When asked about the incident, mother said she took Travis to a beauty college and a man named "Ricky" cut Travis's hair. When the social worker called the college to verify mother's story, she was told there were no students or employees there named "Ricky."

There were also concerns about mother's defensive behavior and unwillingness to accept responsibility for her reactions or behavior. In July 2018, she tested positive for stimulants. She denied using methamphetamine but said she may have been exposed to it while sleeping on friends' couches who were using the drug. Her social worker, Lupe Rios, helped her get into a sober living home to prevent relapse. However, mother quickly got involved in a dispute with other residents. She claimed they were eating her snacks and threatening to harm her. She was moved to a different home and complained about the living conditions and the staff. Unable to tolerate mother's constant dissatisfaction, the house manager evicted her.

Meanwhile, Travis was acting out aggressively at daycare and having difficulty regulating his emotions to the point that he was in jeopardy of being expelled. Mother to some degree aggravated his behavior by calling him excessively at his daycare to check on him. She also struggled with intense emotional reactions when upset. She admitted slapping Travis during a visit when he spit on T.L. without any provocation.

In its report for the six-month review hearing, the department advised against returning Travis to mother's custody but recommended continuing reunification services to the 12-month review hearing. Mother's attorney filed a statement of contested issues,

arguing evidence of mother's significant progress warranted returning Travis to her custody and dismissing dependency jurisdiction. Her attorney also pointed to evidence that mother's visits had progressed to extended visits and that she was employed.

The six-month review hearing was continued and conducted in December 2018. Meanwhile, Michael dropped T.L. off with mother and did not return. In addition, more evidence that mother was involved with Ricky had emerged. Ricky admitted in open court in November 2018 that he was living with mother. The children disclosed that Ricky had been in mother's home while Travis was visiting and assembled their bunk beds. Travis stated " 'Ricky' " has been with his " 'mommy' " and " 'put the beds together.' " He said, " 'Ricky is with us all of the time.' " In an addendum report filed in December, the department recommended the juvenile court reduce mother's visits to supervised visitation.

The juvenile court granted the department's request at the contested six-month review hearing in December 2018 and ordered reasonable supervised visitation for mother with Travis. The court found mother made moderate progress toward reunifying and set the 12-month review hearing for April 2019.

Mother continued her relationship with Ricky over the ensuing months, knowing it jeopardized her ability to reunify. At a team meeting on January 9, 2019, with Rios, mother said she did not understand why having Ricky live with her was a problem because the children loved him, and he was not a threat to their safety. Ricky, who was present, offered to stay elsewhere so mother could resume overnight visits with Travis but expressed no intention of moving out. Mother told Rios that Ricky was on her lease and that she disclosed to the housing authority he was living with her. However, on January 24, mother took T.L. to Rios's office, claiming she had an emergency situation; Ricky was at her apartment and would not leave. He had been up all night playing music. She was too afraid to stay in the apartment and did not want to go home if he was still

there. Mother was hysterical, crying and appeared to have hives all over her neck. Mother said she did not call the police because they would not do anything and would tell her to evict him. She admitted lying about Ricky being on the lease and the section 8 voucher. She said she was afraid if she called the police, Ricky would come back. She did not want to get a restraining order because she loved him and did not know how he was going to react. The following day, Gerald told Rios that Ricky returned to mother's home, but she was too afraid to call the police. Instead, she texted T.L.'s paternal grandmother and asked her to call. Gerald said Ricky slept outside mother's apartment in a storage area until the police made him leave. Mother claimed she called the police multiple times even though the police log documented one call from her on January 24 at 3:13 p.m. Two more calls placed by neighbors at mother's request were logged in several hours later.

In February 2019, Gerald filed a "Caregiver Information Form," expressing his concerns about the affect mother's visits had on Travis. He did not believe mother's efforts to remove Ricky from her apartment were motivated by genuine concern for Travis's safety but because she had no choice. He suspected she would allow Ricky to return as soon as the " 'coast [was] clear.' " He believed her actions evidenced a continuous pattern of poor decision making that jeopardized Travis's safety. Travis meanwhile had flourished in Gerald's care. His behavior at home and school had significantly improved and he met the treatment goals established by his therapist, Marcie Taylor.

Taylor reported that mother confronted her at Travis's last therapy session and accused her of conspiring with Rios to cast her in a negative light by reporting that she and Travis were not bonded. Taylor had planned a celebration for Travis's last session, which mother interrupted. Taylor had to ask staff to escort Travis out of the room during the confrontation because he was becoming dysregulated. Mother denied Travis was

affected by the incident, asserting that he was “ ‘fine’ ” and just playing and Taylor was exaggerating.

Rios met with mother again on February 28, 2019, to inform her of the department’s recommendation to terminate reunification services. Mother yelled and cursed during the meeting, stating she had done everything asked of her. Rios explained she had not done everything because she ignored the department’s warnings not to allow Ricky contact with her children.

In its report for the 12-month review hearing, the department recommended the juvenile court terminate mother’s reunification services and set a section 366.26 hearing. Although mother remained sober, completed her services plan with the exception of the domestic violence program and was successfully parenting T.L., the department did not believe mother could be protective of Travis. The department cited her dishonesty about her relationship with Ricky, and her inability to resolve conflicts in a healthy manner and establish healthy boundaries. The department considered her prognosis poor for reunification and Gerald and his wife were willing to adopt Travis.

The 12-month review hearing was continued and conducted as a contested hearing on June 11, 2019. Mother argued for Travis’s return to her custody. She testified she and Ricky were no longer in a relationship. She last saw him on January 24, 2019, when she kicked him out of her apartment. She was able to get Ricky to leave by calling his probation officer who ordered him to leave. She had no plans to allow him back in her home. She maintained her sobriety by attending Celebrate Recovery and working. She had a sponsor. The juvenile court asked how she was addressing anger and resentment from her past. She said she realized issues from her childhood were not her fault. The court also asked questions to ascertain her attitude about the department and pointed out that she lied. She said she lied about Ricky because she thought he would change. She couldn’t explain why she repeatedly lied about him. She did not consider the department

a friend but understood the social workers were doing their job. She did not believe Rios or Taylor were out to get her.

John Enos, a longtime friend, testified mother was attentive and caring as a parent. He never saw her abuse the children or heard her scream or yell at them or call them names. Before the department became involved with her, he had seen her get overwhelmed by situations and get “very, very worked up.” However, she had since changed and was more relaxed and less stressed. He attributed the change to her success in her job and an improved relationship with T.L. It did not appear to him that she was in a relationship with Ricky. He had been to her apartment multiple times to deliver and move furniture and Ricky was not there. They had also talked often, and she gave no indication she was resuming her relationship with him. He did not have any concerns about Travis being returned to her custody.

Mother’s close friend, Crystal Bailey, testified mother was very patient with her children. She had never seen her hit them. She did not know Ricky, but mother called her the day he refused to leave. She took mother and T.L. to her house for six to eight hours before returning them to mother’s apartment. She believed mother’s approach to her recovery had changed. She was more focused and faithfully attended 12-step meetings. She had developed healthy relationships at church and used her support system. She was also a better mother and provider, having obtained her own apartment and a job.

The juvenile court declined to return Travis to mother’s custody, finding it would be detrimental to his safety and well-being. The court found there was not a substantial probability mother could reunify with him in the remaining three months before the 18-month review hearing when she had failed to do so after 15 months of services. Consequently, the court terminated mother’s reunification services and set a section 366.26 hearing as to Travis.

Before ruling, the court reviewed the evidence at length, beginning with the jurisdictional facts and took judicial notice of the entire file. The court was impressed by mother's sobriety and near completion of her service plan requirements and believed her when she said Ricky was no longer in her life. However, the court also believed that mother had been dishonest and that her dishonesty signaled a threat to her long-term sobriety and ability to safely parent Travis. The court stated, "In order to stay [sober and free from drugs], in order to protect a child from codependent or dangerous or violent relationships, you have to not only acknowledge your problems but you have to [be accountable] for them and you have to tell the truth." The court was also dubious about the circumstances on January 24 that resulted in mother's frantic attempts to oust Ricky from her apartment. The court believed there was more to the story that had not been explained to its satisfaction. The court also found, in addition to mother's dishonesty, that she demonstrated a pattern of disregard for the rules and the department's safety concerns. In addition, it perceived mother as "angry on repeated occasions," which it believed reflected a pattern of failure to take responsibility and an attitude that would place Travis at risk. The court stated, "So it is one thing to participate in services faithfully and it's quite another obviously to get benefit from those services. [¶] ... [¶] It's attitude, inability to acknowledge your own behaviors, your risk, and to address them so that I can believe that you finally did it. I don't believe it."

DISCUSSION

Mother contends the juvenile court's assessment of the risk in returning Travis to her custody was faulty because it either did not consider evidence that it should have considered or considered evidence that was irrelevant or improper. Specifically, she argues the court ignored the fact that she resolved the reason for Travis's initial removal by achieving sobriety. The court remained critical of her enmeshment with Ricky despite testimony from her witnesses that she was no longer in a relationship with him. The

court erred in finding she was not credible in her testimony and that her credibility “served as a ‘substantial risk’ ” in preventing Travis’s return to her custody. Finally, she argues, the court’s reliance on her inability to get along with others in assessing risk was improper because those relationships do not affect her relationship with Travis.

Mother’s references to the juvenile court’s assessment of “risk” are in effect a reference to a determination the juvenile court must make at each review hearing, i.e., whether returning the child to parental custody “would create a substantial risk of detriment” to the child’s safety and well-being. (§§ 366.21, subds. (e) & (f), 366.22, subd. (a).) Rather than challenge the sufficiency of the evidence supporting the juvenile court’s finding it would be detrimental to return Travis, mother attempts to highlight evidence she believes favors a finding it would not and asks this court to reweigh that evidence. As we explain, however, it is not our role to reweigh the evidence or determine whether it supports alternative findings.

There is a statutory presumption at each review hearing that a dependent child will be returned to parental custody. (§§ 366.21, subds. (e) & (f), 366.22, subd. (a).) The juvenile court’s decision not to return the child must be based on a preponderance of the evidence that return “would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.21, subd. (f)(1).) The burden of establishing detriment falls on the department. (*Ibid.*) “The failure of the parent ... to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.” (§ 366.22, subd. (a)(1).) However, regular participation and substantive progress alone do not compel a finding there is no detriment in returning the child to parental custody. It only means there is not prima facie evidence of detriment.

We review a finding of detriment for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) “ ‘Substantial evidence’ means evidence that is

reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.) In reviewing the record for substantial evidence, we consider the evidence favorably to the prevailing party and resolve all conflicts in support of the juvenile court’s finding. (*Ibid.*) Further, we do not inquire whether the evidence supports a contrary finding, but whether substantial evidence, contradicted or not, supports the finding actually made. (*Adoption of A.B.* (2016) 2 Cal.App.5th 912, 925.) Here, for the reasons that follow, we conclude that it did.

Contrary to mother’s assertion, the juvenile court credited her with completing the technical requirements of her case plan and maintaining her sobriety. The court also believed mother when she said that she was no longer in a relationship with Ricky. However, the court did not believe mother made the necessary changes to ensure Travis’s protection and the evidence supports it. Travis was removed from mother’s custody in March 2018 because she and Ricky were selling methamphetamine out of the home where Travis lived and leaving it where it was accessible to him. She was advised at the inception of the case that Ricky was not cleared to be around Travis and warned to not allow it. She signed a written agreement twice, stating she would not allow it. Nevertheless, she maintained a residence with Ricky until the incident in January 2019. Until that time, she frequently allowed him around the children and repeatedly lied to her social worker to preserve the relationship. Why she was so desperate to remove Ricky from her apartment on January 24 is unknown. In any event, she was determined to have Travis returned to her custody and was aggressive toward and hostile to anyone who did not endorse that outcome, notably her social worker and Travis’s therapist. It was ultimately her dishonesty and attitude that influenced the court’s decision. The court had to find Travis would be safe in mother’s care before returning him to her custody at the

12-month review hearing. Here, the court found he would not be safe, i.e., that it would be detrimental, and the evidence supports its decision.

We find no error.

DISPOSITION

The petition for extraordinary writ is denied. This court's opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.